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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,217	08/05/2003	Joseph E. Motz	PLAY / 08	6853

7590 02/24/2004
WOOD, HERRON & EVANS, L.L.P.
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Cincinnati, OH 45202

EXAMINER

BOSS, WENDY L

ART UNIT	PAPER NUMBER
1775	

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,217	MOTZ ET AL.	
	Examiner	Art Unit	
	Wendy Boss	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14, 16, 17 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-14, 16, 17, 19-27, 29 and 30 is/are allowed.
- 6) Claim(s) 28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) Interview Summary (PTO-413) Paper No(s) _____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. U.S. Patent No. 6,472,041 (Burke) in view of US 2002/0028307 (Prevost).

Burke discloses athletic surface comprising a foundation (see column 6, lines 1-6); a drainage member residing on the foundation (see column 8, lines 1-6); a subsurface layer supported by the foundation, the subsurface layer comprising a subsurface flexible backing with a plurality of grass-like subsurface pile filaments extending generally upwardly therefrom to a desired height (see column 6, lines 10-30); a surface layer supported by the subsurface layer (see column 7, lines 31-47); a subsurface fill material residing on the subsurface backing, wherein the composition of the subsurface fill material and the desired height of the subsurface pile filaments are selected to achieve a desired degree of shock absorption for the surface. Burke further discloses that a polymeric coating may be applied to the subsurface fill material and the subsurface pile filaments to hold the fill material in place (see column 7, lines 4-15).

The Burke reference does not necessarily disclose that the fill material includes at least some rubber particles; however, it is disclosed that the infill may be cork (see column 6, lines 60-67). Attention is directed to paragraph 0047 of Prevost, which teaches that cork and rubber

particles are equivalent resilient particles that may be substituted for one another. Such a teaching would have motivated one having ordinary skill in the art to substitute rubber particles for the cork particles disclosed by Burke.

Response to Arguments

3. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

4. Claims 1-14, 16, 17, 19-27, 29 and 30 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or suggest an athletic surface comprising a foundation; a drainage member; a subsurface layer supported by the foundation and comprising a rubber filled synthetic turf; and a surface layer comprising a filled synthetic turf. The most relevant prior art of record is U.S. Patent No. 6,094,860 (Motz et al.), which discloses an athletic surface comprising a foundation; a drainage member; a subsurface layer supported by the foundation; and a surface layer comprising a filled synthetic turf. The subsurface layer in the reference does not comprise a rubber filled synthetic turf.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy Boss whose telephone number is 571-272-1534. The examiner can normally be reached on M-Th 8:30a-6:00p; 2nd F 8:30a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9092.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Wendy Boss


Deborah Jones
DEBORAH JONES
SYSTEMS ENGINEER
SEARCH AND EXAMINER